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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re:)
)
Amendment of Section 73.622(b)) MM Dkt. No. 01-55
Table of Allotments) RM-10034
DTV Broadcast Stations)
(Fayetteville, Arkansas))

To: Chief, Allocations Branch
Policy and Rules Division

COMMENTS IN SUPPORT OF RULEMAKING

Arkansas Educational Television Commission ("AETN"), by its attorneys and pursuant to the Commission's Rules, comments on the above-referenced rulemaking proceeding to amend Section 73.622(b) of its Rules to substitute DTV Channel *9 in lieu of DTV Channel *45 as KAFT-TV's paired digital channel in Fayetteville, Arkansas.

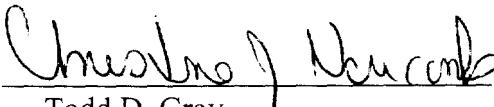
AETN initiated this proceeding and intends to apply for DTV Channel *9, if allotted to Fayetteville, Arkansas. If authorized to do so, AETN will build the station consistent with the realities of funding for public broadcast stations. AETN hereby incorporates by reference the showings made in its *Petition for Rulemaking* in this proceeding, as filed with the FCC on May 9, 2000.

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For these reasons and those expressed in the prior *Petition*, AETN supports the rulemaking proceeding to amend Section 73.622(b) of the Commission's Rules to substitute DTV Channel *9 in lieu of DTV Channel *45 as KAFT-TV's paired digital channel in Fayetteville, Arkansas.

Respectfully submitted,

ARKANSAS EDUCATIONAL TELEVISION
COMMISSION

By: 
Todd D. Gray
Margaret L. Miller
Christine J. Newcomb
Its Attorneys

April 16, 2001

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Amendment of Section 73.622(b),)
Table of Allotments,)
Digital Television Broadcast Stations.)
(Fayetteville, Arkansas))
)
)

MM Docket No. 01-55
RM-10034

NOTICE OF PROPOSED RULE MAKING

Adopted: February 22, 2001

Released: February 23, 2001

Comment Date: April 16, 2001
Reply Comment Date: May 1, 2001

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by Arkansas Educational Television Commission ("AETC"), licensee of noncommercial station KAFT(TV), NTSC *13, Fayetteville, Arkansas. AETC requests the substitution of DTV channel *9 for station KAFT(TV)'s assigned DTV channel *45.

2. AETC states that as a governmental entity operating a statewide public television network, it must be a careful steward of its resources. Accordingly, AETC maintains that the proposed substitution will allow AETC to preserve its and the Arkansas taxpayers' resources. AETC urges that substantial hardship will be inflicted upon AETC if is required to activate its DTV channel on UHF *45 with power levels of 1000 kW as contemplated by the Commission because of the additional massive electrical power costs. AETC states that this expense is significant in light of the fact that it has four additional DTV stations to construct, operate, and maintain, all within a short span of time.

3. We believe petitioner's proposal warrants consideration. DTV Channel *9 can be substituted for DTV Channel *45 at Fayetteville, Arkansas, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (35-48-53 N. and 94-01-41 W.). In addition, we find that this channel change is acceptable under the 2 percent criterion for de minimis impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2).¹ We propose to substitute DTV Channel *9 for DTV

¹ AETC acknowledges that NTSC station KETG-TV, Channel *9, Arkadelphia, Arkansas, would experience a 3.4 percent increase in interference due to the operation of KAFT-DT on Channel *9. However, AETC states that KETG-TV is also licensed to AETC and AETC consents to this increase interference.

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Channel for station KAFT-TV at Fayetteville with the following specifications:

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)
AR Fayetteville	9	19.0	509

4. Accordingly, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Fayetteville, Arkansas	15, *45	*9, 15

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before April 16, 2001, and reply comments on or before May 1, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Todd D. Gray
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036
(Counsel for Arkansas Educational Television Commission)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) and 73.622(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

8. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making

proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

Attachment: Appendix

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APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments,

pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.